

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**OSCAR GARCIA, III**

**VS.**

**RS TRANSFER, SA DE CV AND  
RS LOGISTICS, LLC**

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**CIVIL CASE NO. \_\_\_\_\_  
JURY DEMAND**

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**APPLICATION AND NOTICE OF REMOVAL**

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**TO THE HONORABLE UNITED STATES DISTRICT COURT:**

Pursuant to 28 U. S. C. §§ 1332(a), 1441, and 1446, and Rule 81 of the local rules for the Southern District of Texas, Defendant **RS TRANSFER, SA DE CV** (“Applicant”) files this Application and Notice of Removal and in support thereof would show the Court the following:

This Honorable Court has subject matter jurisdiction over this civil cause of action pursuant to 28 U.S.C. 1332(a)(2). It is a civil action where the matter in controversy exceeds the sum or value of \$75,000. It is between a citizen of a different State and a citizen or subject of a foreign state. This notice of removal is filed within 30 days after the receipt by Defendant of a copy of Plaintiff’s initial pleading.

**I.**

1. Plaintiff, OSCAR GARCIA, III, filed his *Plaintiff’s Original Petition* in a cause of action against Defendant, RS TRANSFER, SA DE CV and RS LOGISTICS, LLC, in the 357<sup>th</sup> Judicial District Court in Cameron County, Texas, Cause No. 2021-DCL-00067.

2. Plaintiff served an Order Granting Motion for Substituted Service on Defendants along with a copy of the citation, and a copy of the petition to RS Transfer, SA de CV and RS

Logistics, LLC, respectively on Mr. Tyron D. Lewis Chairman of the Texas Transportation Commission on January 26, 2021 at 255 W. Ruben M. Torres Blvd., Brownsville, Texas.

3. Plaintiffs' petition names Mr. Sergio Rosendo Garcia as Defendant's registered agent for service for RS Logistics, LLC, an unknown, non-existing entity. Plaintiff has fraudulently included RS Logistics, LLC in his pleadings. This is a non-existing entity therefore an incorrect party and not a matter of misnomer.

4. Defendant Sergio Rosendo Garcia became aware of the lawsuit, and received a copy of the petition on January 26, 2021, when it was left at his front door. This was the first time Defendant Sergio Rosendo Garcia ascertained that the case is one which is removable.

5. On February 1, 2021, Defendant, RS Transfer, SA de CV filed its Original Answer in State court.

6. Pursuant to 28 U.S.C. § 1446(b)(1), this notice of removal is filed within thirty days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

## **II.**

7. Removal is based upon diversity jurisdiction under 28 U.S.C. § 1332(a)(2) because it is a civil action between a citizen of a State and a citizen or subject of a foreign state

8. The action described in paragraph 1 arises from a motor vehicle incident that occurred in Cameron County, Texas on or about July 15, 2019. Defendant RS Transfer, SA de CV pleads that this Court has subject matter jurisdiction over this action, because Plaintiff seeks damages in excess of this Court's minimum jurisdictional limits and the lawsuit arises out of events or omissions that occurred in Cameron County. This case is being removed to the district and division from where the State court action was pending.

9. Based upon information and belief, according to Plaintiff's petition, Plaintiff Oscar Garcia, III is a resident, citizen and domiciled in the State of Texas.

10. Defendant RS Transfers, SA de CV is a Mexican corporation located in Matamoros, Tamaulipas, Mexico.

11. Defendant RS Logistics, LLC is a non-existent corporation.

12. The amount in controversy exceeds \$75,001.00. Plaintiff seeks monetary relief of over \$1,000,000.00.

13. Plaintiff also sued RS Logistics, LLC, alleging that the driver was operating the tractor-trailer within the course and scope of his employment RS Transfer SA de CV and RS Logistics, LLC. RS Logistics is not an existing corporation. The driver was employed by RS Transfer, SA de CV. The tractor involved in the accident was owned by RS Transfer, SA de CV.

14. Fraudulent joinder can be established in two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. *Travis v. Irby*, 326 F.3d 644, 647 (5<sup>th</sup> Cir. 2003) *citing Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5<sup>th</sup> Cir. 1999). Under the facts and claims plead, Plaintiff would never be able to recover from Defendant RS Logistics, LLC. There is no possibility that Plaintiff stated a claim under state law against a non-existing corporation, RS Transfer, LLC. As such, Plaintiff's claim against RS Logistics, LLC constitute fraudulent joinder in an attempt to defeat diversity jurisdiction.

### III.

15. Pursuant to Rule 81 of the Local Rules of the Southern District of Texas, Applicant would show the following:

a. Plaintiff: Oscar Garcia, III.

- b. Defendant: RS Transfers, SA de CV
- c. Status of service of process: Defendant RS Transfer, SA de CV c/o Rosendo Sergio Garcia received a copy of an Order for Substituted Service, citation and *Plaintiffs' Original Petition* on January 26, 2021 which was left at 255 W. Ruben M. Torres Blvd., Brownville, Texas
- d. Counsel for each party is as follows:

Counsel for Plaintiff:

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- e. A jury was demanded by Defendant in the State district court, and the jury fee was paid.

- f. Name and address of court from which the case is being removed:

357<sup>th</sup> Judicial District Court

Cameron County

Brownsville, Texas

- 16. Pursuant to Local Rule 81, a copy of all pleadings asserting causes of action and all answers to such pleadings, a copy of all orders signed by the state judge, a copy of the docket sheet, and an index of the matters being filed are attached hereto.

WHEREFORE PREMISES CONSIDERED, Applicant prays that the above action now pending in the 49<sup>th</sup> Judicial District Court of Webb County, Texas, Cause No. 2021-DCL-00067, styled *Oscar Garcia, III vs. RS Transfer, SA de CV and RS Logistics, LLC*, be removed to this Court pursuant to Rule 28 U.S.C. §1332 and Rule 81 of the Local Rules of the Southern District of Texas and that Applicant may have such other and further relief at law or in equity to which he may show himself justly entitled.

Respectfully submitted,

By: 

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Federal Bar No. 18972  
Attorney in Charge

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Attorneys for Defendant  
RS Transfer, SA de CV

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing Application and Notice of Removal has been forwarded to opposing counsel on this the 16<sup>th</sup> day of February 2021, as follows:

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